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SUPREME COURT, U.S.

No. 82-928

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

ALTON BASKERVILLE,

Petitioner,

v.

CHARLES SYLVESTER STAMPER,

Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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OPINION BELOW

The opinion of the United States Court of Appeals
for the Fourth Circuit is an unreported order; it is reproduced
in the petition as Appendix A beginning at App. 1.

STATUTE INVOLVED

28 U.S.C. § 2254 (1977) provides in relevant part:

(b) An application for a writ of habeas corpus in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

QUESTION PRESENTED

Whether, in light of this Court's decision in Rose v. Lundy, 50 U.S.L.W. 4272 (U.S. Mar. 3, 1982), the court below should have remanded this cause to the district court with direction to dismiss, where respondent's writ of habeas corpus, as amended, contained both an unexhausted and exhausted claims.

STATEMENT OF THE CASE

Respondent adopts the statement of the case appearing at pages 2 and 3 of the petition for certiorari.

REASONS FOR DENYING THE WRIT

At page 2 of its Petition, petitioner admits that respondent's habeas corpus petition, as amended, contained an unexhausted claim (ineffective assistance of counsel) as

well as exhausted claims. Accordingly, this Court's holding in Rose v. Lundy, 50 U.S.L.W. 4272 (U.S. Mar. 3, 1982), is dispositive and the circuit court below correctly remanded this cause to the district court with direction to dismiss. Indeed, this Court's recent decision in Rose could not have been more apposite to the question here in issue:

In sum, because a total exhaustion rule promotes comity and does not unreasonably impair the prisoner's right to relief, we hold that a district court must dismiss habeas petitions containing both unexhausted and exhausted claims. (emphasis added)

Id., 50 U.S.L.W. at 4276. This case comes squarely within the Rose v. Lundy rule and does not merit additional attention or consideration by this court.

Petitioner's argument that "[t]he reasons underpinning the Rose v. Lundy decision are not present in this case," is premised upon petitioner's erroneous interpretation of the exhaustion requirement as a right that "inures to the benefit of the state," and one that may be waived by the state. Petitioner's Brief for Certiorari at 4-6. This Court has never characterized the exhaustion requirement as a state right that may be waived by the state prosecutor and nothing in Rose indicates that the rule is to be applied only when urged by a state's attorney.

At the heart of the exhaustion rule is the premise that state courts should have the initial opportunity to consider state prisoners' allegations that their federal

rights have been violated. The rule seeks to prevent unnecessary conflicts between the state and federal courts. If this goal is to be accomplished, the rule cannot be avoided at the whim of the state attorney general. The preference of the state attorney general has no bearing on the comity principles that require federal courts to abstain from ruling on habeas corpus petitions containing unexhausted claims.

In summary, the rule articulated by this Court in Rose is clear, unambiguous and easily applied. It simply requires a federal district court to dismiss any state prisoner's habeas corpus petition that contains a claim giving rise to state court remedies that have not been exhausted. In this case, the petition filed by respondent in the district court below, as amended, included an unexhausted claim. In light of Rose, that petition was properly remanded by the circuit court below, with direction to dismiss.

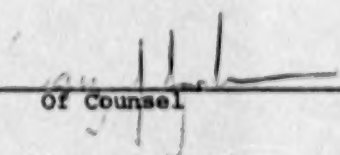
CONCLUSION

For the foregoing reasons, respondent Charles Sylvester Stamper respectfully requests this Court to deny a writ of certiorari to review the judgment of the Fourth Circuit.

Respectfully submitted,

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January 13, 1983

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On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Fourth Circuit

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, Charles Sylvester Stamper, who is now held in a Commonwealth of Virginia penitentiary, asks leave to file the attached Brief In Opposition to Petition for a Writ of Certiorari and to proceed in forma pauperis pursuant to Rule 46 of the Rules of the Supreme Court of the United States. The district and circuit courts below appointed counsel to represent respondent pursuant to 18 U.S.C. § 3006A; therefore, respondent does not file a Rule 46.1 affidavit herewith.

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